

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Crl.MC.No. 2081 of 2007()

CC.1130/2005 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

PETITIONER: ACCUSED 1 AND 2

1. VIJAYAKUMAR, AGED 41 YEARS,
S/O PADMANABHAN, CHIRAYIL,
PANAVALLY P.O., CHERTHALA.
2. SATHYIKUMAR, AGED 43 YEARS,
S/O PADMANABHAN, CHIRAYIL,
PANAVALLY P.O., CHERTHALA.

BY ADV. SRI.K.RAVIKUMAR
SRI.P.V.JAYACHANDRAN

RESPONDENTS: COMPLAINANT

1. REMA, W/O REGHUVARAN,
AGED 34 YEARS, KYTTATHCHIRAVEEDU,
PANAVALLY P.O., CHERTHALA.
2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

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Dated this the 28th day of June, 2007

ORDER

The petitioners are accused in a private complaint launched by the 1st respondent herein. The learned Magistrate has taken cognizance. The petitioners have already appeared before the learned Magistrate and has been enlarged on bail, it is submitted. The petitioners have now come to this Court with a prayer that the private complaint may be quashed invoking the powers under Sec.482 of the Cr.P.C.

2. What are the reasons? The learned counsel for the petitioners, first of all, contends that the allegations are totally false. Truth or falsity of the allegations cannot be judged by this Court at the present stage and with the materials presently available. That question will have to be considered in the course of the proceedings on the basis of the materials before

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the learned Magistrate. On that ground, the powers under Sec.482 of the Cr.P.C. cannot now be invoked.

3. The learned counsel for the petitioner then contends that the motive alleged in the complaint is totally unacceptable. It is contended that there was a civil dispute between the parties and that allegedly operated as the motive. It is submitted that that civil suit has been settled long earlier as per Annexure-II judgment rendered on the basis of a report of settlement. I have gone through the complaint – Annexure-I. Not only that motive; but other motives are also alleged in the complaint. The alleged reason that the civil suit has been disposed of by settlement is, in these circumstances, no reason to invoke the powers under Sec.482 of the Cr.P.C.

4. The learned counsel for the petitioner thirdly contends that motive was there not for the petitioners but for the complainant as allegations have been raised two days subsequent to the alleged incident in Annexure-I complaint against the complainant by the petitioners by filing a civil suit

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alleging trespass. That can only show that the motive/strain in the relationship continued to exist on the date of the alleged incident.

5. It is unnecessary to advert to the facts in detail. I am satisfied that no circumstances have been shown to exist which can justify the prayer for invocation of the jurisdiction under Sec.482 of the Cr.P.C. to quash the proceedings.

6. I am of opinion that the petitioners must raise their claim for discharge/acquittal before the learned Magistrate at the appropriate stage. If the petitioners raise a claim for discharge under Sec.245(2) of the Cr.P.C. immediately or under Sec.245(1) of the Cr.P.C. at later appropriate stage, the learned Magistrate must proceed to consider such plea for discharge and pass appropriate orders.

7. The learned counsel for the petitioner submits that if the personal presence of the petitioners were insisted on all dates of posting, it would cause unnecessary hardships and loss to the petitioners. I find no reason to assume that the learned

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Magistrate shall insist on such unnecessary personal appearance of the petitioners. The petitioners can certainly appear through their counsel and apply for exemption and unless their personal presence is necessary and essential for further progress of the case, the learned Magistrate need not insist on personal appearance of the petitioners.

8. With the above observations, this petition is dismissed.

(R. BASANT, JUDGE)

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